

Award No. 16434

Docket No. TE-15084

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Pennsylvania Railroad, that A. S. Carter, regularly assigned block operator, Norris Tower, was unjustly disciplined sixty (60) days' suspension following his appeal on November 9, 1962, from dismissal on the following charge:

1. Making movements not authorized by Superintendent-Transportation in violation of Rule 271 on the following dates and in addition failing to advise Train Dispatcher after movements were made: August 1, 2, 3, 6, 7, 8, 9, 10, 13, 14, 15, 16, 20, 22, 24, 27, 29, 30, 31 and September 4, 1962.
2. Granting permission for movement of Engine 5566 between Reading and Mile Post 66 in error when block record clearly indicated Engine 5566 was working between Phoenixville and Cromby.
3. Furnishing incorrect information to Yard Engine 5572 when train was leaving Reading on September 4, 1962, to the effect that they must report their arrival at Mile Post 66 so that they could release Train S-8 Engine 5570 from Orchard.

A. S. Carter to be compensated for all time lost from service from September 19, 1962, until November 19, 1962, and his record cleared of this discipline.

OPINION OF BOARD: This is a discipline case arising out of a collision which occurred on September 4, 1962, near Temple, Pennsylvania between Reading Station and Orchard Block Limit Station. Claimant was regularly employed as the first trick Block Operator at the Norris Intersection and Block Station which controlled movement over the particular section where the collision took place. Although Claimant ultimately was cleared of any responsibility for the collision, a series of investigations disclosed certain alleged discrepancies in his work performance for which he was initially discharged from service. However, this penalty was reduced on appeal to a sixty day suspension by Carrier, which Petitioner seeks to set aside in the instant claim.

In the first instance, Petitioner contends that Claimant should not have been held out of service pending trial from September 19, 1962 until the completion of the final investigation. Regulation 6-A-1(b) provides as follows:

"When a major offense has been committed a Group 2 employee may be held out of service pending trial and decision."

Carrier advised Claimant that he would be held out of service from September 19, 1962 pending trial "in connection with discrepancy between Block Sheet and Train Sheet on September 4, 1962, as revealed at investigation. . . ." on September 19, 1962. Clearly, the investigation on September 19, 1962 was held to determine all the circumstances surrounding the collision on September 4, 1962 and Claimant's responsibility, if any, for said collision. Claimant was cleared of any responsibility for the collision and separate and distinct charges as outlined in the Statement of Claim were filed against him on October 15, 1962, which were the subject of his trial on October 17 and 18, 1962.

Although the specific charges filed against the Claimant on October 15, 1962 might constitute in the aggregate a major offense within the meaning of Regulation 6-A-1(b), the record here clearly reveals that Claimant was withheld from service on September 19, 1962 because of alleged improper work performance on September 4, 1962, and implied responsibility for the collision which occurred on that date and of which he was subsequently cleared.

In view of the foregoing, we must conclude that Carrier violated Regulation 6-A-1(b) by holding Claimant out of service on September 19, 1962. Under the particular circumstances of this case, Carrier's violation of Regulation 6-A-1(b) constitutes a material breach of the Agreement. Accordingly, the claim will be sustained.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated by the Carrier.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of June 1968.

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